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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 443

NORMAN LUMBER COMPANY,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

WALTER R. JONES, JR., and
WALTER R. JONES,
Counsel for Petitioner.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

Norman Lumber Company prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above entitled case on June 13th, 1955.

Citations to Opinions Below

The opinion of the District Court (R. page 22) is reported in 127 Federal Supplement, page 518. The opinion of the Circuit Court of Appeals is printed in Appendix A, hereto, infra, page 1, and is unreported.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on June 13th, 1955, and the petitioner was granted

an extension of time to file petition for a writ of certiorari until and including October 11th, 1955. Jurisdiction of this court to review the judgment of the Circuit Court of Appeals by certiorari is conferred by Section 1254 (1) Title 28 U. S. Code Annotated and by Rule 19 of the Revised Rules of this court.

Question Presented

Must a Federal Judgment of Condemnation of land be indexed and cross-indexed in the county where the land lies in order to give notice to a purchaser for value without notice of the proceeding?

Note: All record references are to Brief and Appendix for Appellant filed in Circuit Court of Appeals.

Statutes Involved

United States Statutes:

1. The General Condemnation Act of August 1, 1888, 25 Stat. 357, 40 U. S. C. 258, printed in Appendix B hereto, infra. P. 12.

2. The General Conformity Act of August 1, 1888, 25 Stat. 357, 28 U. S. C. 1962. R. P. 18.

North Carolina Statutes:

1. G. S. 47-18, The Connor Act requiring recording of instruments affecting title to land. R. P. 12.

2. G. S. 1-228, Requiring recording and indexing judgments passing title to land. Printed in Appendix C hereto, infra. P. 12.

3. G. S. 1-237, The North Carolina Conformity Act. R. P. 17.

4. G. S. 1-233, Statutes governing the docketing of judgments. R. P. 14.

5. G. S. 1-234, Where and how docketed; lien. R. P. 14.

6. G. S. 8-19, Common Survey of contiguous tracts evidence. R. P. 18.

Statement

This case involves the right of the Norman Lumber Company, petitioner, to cut the timber on a certain tract of land in Montgomery County, North Carolina.

The Norman Lumber Company in good faith and for value purchased the timber on said land from the E. J. Bruton heirs in 1951, took deeds for the timber and duly recorded the same in the county where the land lies. The public records of Montgomery Count disclose that the E. J. Bruton heirs owned title to said lands and the timber thereon and that the title to the timber passed from them to the Norman Lumber Company.

The United States of America claimed title to the lands under a condemnation proceeding instituted and conducted in the District Court for the Middle District of North Carolina in Guilford County at Greensboro. The United States of America did not have its title recorded and indexed in Montgomery County, North Carolina, as required by the registration laws of said state in order to protect its title as against innocent purchasers for value.

It was conceded by the United States of America that the Norman Lumber Company was a purchaser for value without notice of the condemnation proceeding, therefore, it was stipulated that the rights of the parties should be determined as a matter of law upon the answer to the single issue above set forth.

Reasons for Granting the Writ

The question involved in this case has never been decided by the Supreme Court of the United States. It has never been previously presented to, or decided by any of the in-

ferior courts. It presents a new and important question for determination.

The judgment appealed from casts a cloud of illegitimacy on the title to each piece of privately owned property in the United States and is in our opinion contrary to law and is not supported by authority. The decision appealed from clashed with generally accepted land law as practiced throughout the nation and should be reversed.

Attorneys examining and passing upon land titles throughout the several states have in their practice almost universally relied upon the records in the county where the land lies. Certificates of title by attorneys have been based on the county records. Insurance companies, banking institutions and all other lending agencies have granted loans on the faith of such records and the certificates based thereon.

The very nature of the case presents a question of almost universal public interest. The decision as rendered by the lower court is in conflict with the State Statutes and, in effect, without so declaring, renders the registration laws of North Carolina and all of the other forty-seven states ineffective so far as the United States of America is concerned. It should be clearly determined by the highest court in the land whether or not the United States of America in acquiring title to lands, either by deed, or by condemnation proceedings, is required to follow out the State procedure and record and index the instrument by which it acquired title, in the county where the land lies, in order to give notice to innocent purchasers for value. Attorneys throughout the United States examining and passing upon titles, are entitled to know the ultimate answer to the above question so that it can be determined whether or not they will be required in passing upon land titles, not only to examine the county records, but also to visit and examine

the records of the several District Courts of the United States. Also all lending agencies and institutions as well as individuals holding securities based upon land titles are entitled to know the ultimate answer to the question involved in this case. The reasons therefor are too obvious for further elaboration.

Conclusion

It is respectfully submitted that the petition for a writ of certiorari in this case should be granted.

WALTER R. JONES, JR., and
WALTER R. JONES,
Counsel for Petitioner.

APPENDIX A

Judgment of the Circuit Court of Appeals for the Fourth Circuit entered June 13th, 1955.

PARKER, Chief Judge:

This is an appeal in action instituted by the United States to protect its right in the timber on a certain tract of land which it had condemned. The timber was that on an 89.6 acre tract in Montgomery County, North Carolina, condemned along with another tract in a condemnation proceeding in the United States District Court for the Middle District of North Carolina in the year 1936. That proceeding was entitled "*United States of America* v. 1053.2 *acres of land*", and all persons supposed to have any interest in the land were duly made parties thereto. The 89.6 acre tract was condemned as the property of Mary Ann Watkins, who was claiming under a deed from one Batton to W. E. Watkins. She was made a party individually and as executrix of W. E. Watkins. E. W. Bruton and other heirs at law of E. J. Bruton were also made parties to the proceeding on the ground that they owned adjoining property. The judgment was docketed and indexed in the office of the Clerk of the United States District Court where it was rendered and was docketed, indexed and cross indexed in the office of the Clerk of the Superior Court of Montgomery County, North Carolina, but the names of the Bruton heirs did not appear there in the indexing and cross indexing. The judgment was not registered in the office of the Register of Deeds of Montgomery County, although the judgment in terms required that this be done.

The timber is claimed by the Norman Lumber Company under a timber deed from the Bruton heirs executed in the year 1951, fifteen years after the condemnation. The company contends that the 89.6 acre tract was part of a 356

acre tract belonging to the Bruton heirs and that, while the judgment in the condemnation proceeding is binding upon these heirs since they were parties to the proceeding, it is not binding on the lumber company because, while the judgment was recorded in the office of the Clerk of the Superior Court of Montgomery County, it was not there indexed and cross indexed as to the heirs. It was agreed between the parties that judgment should be entered upon the pleadings and stipulations upon the answer given by the court to two questions, viz.:

> "(1) Must a federal judgment of condemnation of land be indexed and cross indexed in the county where the land lies in order to give notice to a purchaser for value without notice of the proceeding?
>
> "(2) Were the paper writings offered in evidence by plaintiff sufficient as matter of law to put the defendant Bruton heirs on notice that a portion of the lands within the boundaries of the 356 acre tract claimed by them was being condemned by the United States Government?"

The trial judge gave a negative answer to the first of these questions and an affirmative answer to the second, and entered judgment for the United States from which the lumber company has appealed. No question is raised on the appeal as to the answer to the second question, nor does the lumber company contend here, as it did in the lower court, that the judgment should have been recorded in the office of the Register of Deeds of Montgomery County. The sole question before us is whether the rights of the government under the condemnation proceeding are defeated as to the lumber company, which obtained a conveyance of the timber 15 years later, by reason of the fact that the judgment of condemnation was not indexed and cross indexed as to the Bruton heirs. We think as did

the judge below that this question must be answered in the negative.

There can be no question but that the condemnation proceeding, which was a proceeding in rem, gave title to the United States good against the world, as well as against the Bruton heirs who were parties to the proceeding. "Such an exercise of eminent domain founds a new title and extinguishes all previous rights". *A. W. Duckett & Co., Inc.* v. *United States*, 266 U.S. 149, 151; *United States v. Dunnington*, 146 U.S. 338, 350; *Dupasseur* v. *Rochereau*, 21 Wall. 130, 135-136; *United States* v. *Winn*, 83 F. Supp. 172. Upon the entry of the judgment and the payment into court of the compensation awarded for the taking of the land, the United States unquestionably acquired good title thereto. This title could not be divested or impaired except by law of the United States, and we find nothing in any federal statute which could be given that effect. The North Carolina statutes as to the recording and cross indexing of judgments, have no application to federal judgments of condemnation unless an act of Congress so provides, and we find no such provision. Certainly there is nothing to that effect in the Act of August 1, 1888, 40 USC 258, the act which prescribed condemnation procedure at the time of the condemnation here. That section provided:

> "The practice, pleadings, forms and modes of proceedings in causes arising under the provisions of section 257 of this title shall conform, as near as may be, to the practice, pleadings, forms and proceedings existing at the time in like causes in the courts of record of the State within which such district court is held, any rule of the court to the contrary notwithstanding."

This was merely extending the provisions of the old Conformity Act of June 1, 1872, 17 Stat. 196, 197, 28 USC

724, to condemnation proceedings. It related to court procedure, not to registration of muniments of title. Any provision, even of a state condemnation law, "relating to any subject other than practice, pleadings, forms and proceedings is * * * not applicable in a federal condemnation proceeding". *United States* v. *Certain Lands, etc.*, 39 F. Supp. 91, 92; *Chappell* v. *United States*, 160 U.S. 499, 513. Under the old Conformity Act of 1872, 28 USC 724, the rule was that, even as to practice, pleadings and forms and modes of procedure, the statute applied only to proceedings for procuring the judgment, not to those subsequent thereto. *Friedly* v. *Giddings*, 119 F. 438, 441, aff. 2 Cir. 128 F. 355. That docketing and cross indexing of the judgment of condemnation in accordance with state law for the protection of possible purchasers from the condemnee was not regarded as a part of the procedure provided for by the old condemnation statute is properly inferable from the fact that no provision therefor is contained in Rule 71A which took the place of the statutory procedure.

Appellant relies upon the Lien of Judgments Act of August 1, 1888, 25 Stat. 357 codified in 28 USC 1962, which provides that judgments rendered in United States District Courts shall be a lien on property located in the state "to the same extent and under the same conditions" as state court judgments, upon provision being made by the law of the state for the docketing of such District Court judgments.* North Carolina has made statutory provision

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* 28 USC 1962 is as follows: "Every judgment rendered by a district court within a State shall be a lien on the property located in such State in the same manner, to the same extent and under the same conditions as a judgment of a court of general jurisdiction in such State, and shall cease to be a lien in the same manner and time. Whenever the law of any State requires a judgment of a State court to be registered, recorded, docketed or indexed, or any other act to be done, in a particular manner, or in a certain office or county or parish before such

for the docketing of such judgments. General Statutes of North Carolina chapter 1, sec. 237. State court judgments become liens on real estate only when docketed in the office of the Clerk of the Superior Court in the county where the real estate is situate (G.S. 1-234) and then only if properly indexed and cross indexed showing the name of the judgment debtor. *Southern Dairies* v. *Banks*, 4 Cir. 92 F. 2d 282, cert. den. 302 U.S. 761; *Jones* v. *Currie*, 190 N.C. 260, 129 S.E. 605; *Wilkes* v. *Miller*, 156 N.C. 428, 72 S.E. 482; *Dewey* v. *Sugg*, 109 N.C. 328, 13 S.E. 923, 14 L.R.A. 393; *Holman* v. *Miller*, 103 N.C. 118, 9 S.E. 429, 430. The Lien of Judgments Act, however, has no application to a judgment for the condemnation of land under which title is acquired by the condemnor. It relates to the acquisition of liens upon the lands of those against whom judgments are rendered, not to the transfer of the lands as a result of condemnation. It is worth noting that Congress recognized the distinction in that it passed on the same day two separate and distinct statutes with respect to these matters. Chapter 728 of the Statutes at Large of 1888 was the Condemnation Act, section 2 of which provided for conformity to state practice in condemnation proceeding; chapter 729 was the Lien of Judgments Act. If it had been the intention that the provisions of the Lien of Judgments Act apply to proceedings under the Condemnation Act it would have been easy enough to so provide; and the fact that no such provision was made indicates that nothing of the sort was intended. The language of the Lien of Judgments Act is that "Judgments and decrees rendered in a circuit or district court of the United States within any state shall be liens on property etc." There is nothing in this to sug-

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lien attaches, such requirements shall apply only if the law of such State authorizes the judgment of a court of the United States to be registered, recorded, docketed, indexed or otherwise conformed to rules and requirements relating to judgments of the courts of the State."

gest that the validity of judgments of condemnation shall be dependent upon their being docketed in accordance with state law or otherwise.

Whether docketing and cross indexing of federal judgments of condemnation with state court records should be required as a condition of validity as against subsequent purchasers from the condemnee is a matter for Congress, and, so far, Congress has not seen fit to take action with regard to the matter. As was well said by the learned judge below:

> "It is true that it imposes a severe hardship on attorneys undertaking to examine titles, to have to inquire at the office of the Clerk of the United States District Court before he can be sure that there is no condemnation judgment entered there which is not recorded and cross indexed in the county where the land lies, but this inconvenience cannot outweigh the public interest in safeguarding and protecting the property of the United States in accordance with the laws of the United States. The United States cannot always have watchers present to observe trespassers who may go upon public lands and commit waste, while the private owner does have an opportunity to keep an eye on his property. The enormous amount of land owned by the United States for various Governmental purposes is such that its disposition cannot be effected in any manner except under a clear mandate of the law duly enacted by Congress."

There was no error and the judgment of the District Court will be affirmed.

Affirmed.

APPENDIX B

The General Condemnation Act of August 1, 1888, 25 Stat. 357, 40 U.S.C. 258: The practice, pleadings, forms and modes of proceedings in causes arising under the provisions of section 257 of this title shall conform, as near as may be, to the practice, pleadings, forms and proceedings existing at the time in like causes in the courts of record of the state within which such district court is held, any rule of the court to the contrary not withstanding.

APPENDIX C

North Carolina Statute, G. S. 1-228: Regarded as a deed and registered.—Every judgment in which the transfer of title is so declared, shall be regarded as a deed of conveyance, executed in due form and by capable persons, notwithstanding the want of capacity in any person ordered to convey, and shall be registered in the proper county, under the rules and regulations prescribed for conveyances of similar property executed by the party. The party desiring registration of such judgment must produce to the register a copy thereof, certified by the clerk of the court in which it is enrolled, under the seal of the court, and the register shall record both the judgment and certificate. All laws which are passed for extending the time for registration of deeds include such judgments, provided the conveyance, if actually executed, would be so included. (1850, c. 107, ss. 2, 4; R. C. c. 32, ss. 25, 27; 1874-5, c. 17, ss. 2, 4; Code, ss. 427, 429; Rev., ss. 567, 568; C. S., s. 608.)

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